IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1348 OF 2005

Kirit Dhruv. ... Applicant.

Versus.

Union of India and others. ... Respondents.

Shri S.N.Kantawala with Shri Yogesh M.Rohira for the Applicant.

Shri H.V.Mehta with Shri M.M.Goswami for the Respondent No.1.

Shri K.V.Saste, A.P.P. for the State.

CORAM : ABHAY S. OKA, J.

DATED : 9th August, 2005.

P.C.:

1. Heard the learned Counsel appearing for the parties.

2. This is an application for anticipatory bail. The prayer (a) of the Application reads thus:

> (a) Till pendency of the Application for settlement filed by the Applicant (at Exhibit "C" above), stay from arrest be granted, in the proceeding which is the subject matter of the said Application for settlement.

The case of the Applicant is that he knows one Anugandhi Nadar (Respondent No.4) with whom the Applicant had loan transactions. The case of the Applicant is that the

Respondent No.4 without any knowledge and/or association of the Applicant in any manner whatsoever imported in the name of M/s.Raj Associates on 19th December 2004 vide flight No.CX-750 which arrived from Dubai one consignment weighing 24.916 kgs. containing "Dexamethasone Sodium Phosphate" (Steroid) of the value CIF US $ 850/- per kg. The goods were, however, declared as "Epoxy Resin SPX" declared to be of total value US $ 200/-. The Officers of the Respondent No.2 detected the misdeclaration and the goods were seized. The residence of the Respondent No.4 was searched. The Respondent No.4 was arrested on 21st December 2004 on the ground that he had committed offence punishable under the section 135 of the Customs Act, 1962.

3. The Respondent No.4 filed an application for settlement of the case under section 127B of the Customs Act, 1962. Thereafter, the Applicant filed his application for settlement as co-Applicant. The present Application is filed on the apprehension that though the Settlement Commission constituted under section 32 of the Central Excise Act, 1944 has power to grant immunity from prosecution under the Customs Act, Central Excise Act, Indian Penal Code and other Central Acts, the officers of the Respondent No.2 may arrest him. The learned Counsel appearing for the Applicant has invited my attention to the fact that though the date in the settlement proceedings was notified as 23rd June 2005,

the date was preponed without notice to the Applicant and the Settlement Commission decided the Application in the absence of the Applicant. He invited my attention to the order dated 16th June 2005 passed by this Court in a Writ Petition remanding the Application for Settlement to the Settlement Commission. He invited my attention to Admission Order dated 23rd June 2005 passed by the Settlement Commission after the order of remand.

4. The learned Counsel for the Applicant submitted that even assuming that any offence under section 135 of the Customs Act is made out, in view of the admission order dated 23rd June 2005, the Custom Officers cannot exercise any power as Settlement Application relates to not only the import made on 19th December 2004 but also the consignments of other imports. He submitted that in view of the provisions of section 127F of the Customs Act, 1962, all the powers of the Officers of the Customs Department will now be exercised by the Settlement Commission. He, therefore, submitted that the Applicant needs to be protected from arrest at the instance of the Officers of the Respondent No.2.

5. The learned Counsel for the Respondents submitted that the Application for settlement relates to only one consignment and now it is revealed that about 60 consignments of Steroids have been imported in the past

during the period between 4th January 2003 and 10th December 2004 in the name of M/s.Raj Associates through Aircargo Complex, Sahar, by mis-declaring the goods as Epoxy Resin SPX with negligible value. He relied upon a chart giving details of the said consignments. He submitted that the department is investigating into the offence relating to the said sixty consignments which are not part of the proceedings before the Settlement Commission. He stated that in so far as the offence relating to the said 60 consignments is concerned, the Respondent No.2 will give 72 hours notice to the Applicant in the event of Respondent No.1 and 2 desire to arrest the Applicant.

6. I have considered the submissions. On a plain reading of the Application for Settlement made by the Respondent No.4 and the Application of the Applicant, it is seen that the same relates to only one consignment arrived on 19th December 2004 which is referred to in paragraph 2(ii) of this bail application. A perusal of the admission order dated 23rd June 2005 and in particular paragraph 17 thereof shows that it was brought to the notice of the Settlement Commission that the Revenue has kept the matter open for taking action in case of earlier consignments imported by the Applicant. In fact, in paragraph 17 the Settlement Commission has recorded the request made by the Advocate for the Applicant that the matter may be decided as a

whole by the Settlement Commission. The Settlement Commission has observed that the Bench refrains from passing any order in this regard at this stage. Thus, at this stage it appears that in so far as the 60 other consignments are concerned, the Settlement Commission is not seized of the matter. Therefore, prima-facie I am of the view that the Officers of the Customs Department have all powers to investigate in so far as the said other consignments are concerned. However, case relating to the grant of anticipatory bail in that behalf need not be considered as the learned Counsel for the Respondent No.2 has agreed to give 72 hours advance notice to the Applicant in the event the Respondent No.2 desires to arrest the Applicant in connection with the alleged offence pertaining to the said consignments.

7. In so far as the consignment which is the subject matter of Settlement Application is concerned, the order of admission has been passed by the Settlement Commission. In view of the fact that the Settlement Commission has statutory powers to grant immunity and in view of the provisions of the Customs Act, 1962 and in particular section 127F, the limited protection deserves to be granted to the Applicant. Blanket protection as prayed cannot be granted as it appears that the Respondent No.4 has made a statement under section 108 of the Customs Act stating that as per the direction of the Applicant he brought consignments in the name of

M/s.Raj Associates. If the settlement proceeding is decided against the Applicant, action can be taken by the Custom Officers. The said limited protection will enure to the benefit of the Applicant only till the settlement application is decided and thereafter the Applicant will be free to take appropriate steps.

8. Hence, the Application is disposed of by the following order:

(i) In the event of arrest of the Applicant in connection with offence under the Customs Act relating to the consignment referred to in paragraphs 2(ii) of this Application, the Applicant shall be enlarged on bail subject to executing personal bond in the sum of Rs.1 lakh with one or two sureties in the like amount. This order will enure to the benefit of the Applicant only till the disposal of the settlement proceedings which are pending before the Settlement Commission, Mumbai, relating to the admission order No.7/2005-CUS. Thereafter, the Applicant will be free to make appropriate application before the appropriate Court.

(ii) Anticipatory bail granted is subject to the conditions incorporated in clause (i) to (iii) of Sub-section 2 of section 438 of the Code of

Criminal Procedure, 1973.

(iii) In the event of the Customs Department deciding to arrest the Applicant in connection with the offences relating to the other consignments, 72 hours prior notice will be given to the Applicant.

(iv) Parties to act on an authenticated copy of this order.

Judge.